

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

THE TRUSTEES OF COLUMBIA  
UNIVERSITY IN THE CITY OF NEW  
YORK,

*Plaintiff,*

v.

SYMANTEC CORPORATION,

*Defendant.*

Civil Action No. 3:13-cv-00808-MHL

**PLAINTIFF'S UNOPPOSED MOTION FOR LEAVE  
TO FILE MOTION FOR PARTIAL SUMMARY JUDGMENT  
WITHOUT PREJUDICE TO A SUBSEQUENT MOTION  
FOR SUMMARY JUDGMENT**

Plaintiff, The Trustees of Columbia University in the City of New York (“Columbia”), pursuant to Local Rule 56(C), respectfully moves the Court for leave to file a separate motion for partial summary judgment without prejudice to Columbia’s right to file another motion for summary judgment on other issues at a later stage of the case. Counsel for Columbia conferred with counsel for Symantec Corporation (“Symantec”) and is informed that Symantec does not oppose this motion for leave.

On August 7, 2018, this Court reopened proceedings after a stay and administrative closure of more than 3.5 years. (ECF No. 181.) During the stay and administrative closure, Symantec challenged the validity of U.S. Patent Nos. 8,074,115 and 8,601,322 (the “Patents-In-Suit”) in *inter partes* review (“IPR”) proceedings before the Patent Trial and Appeal Board (“PTAB”). The PTAB issued final written decisions for each patent, and found certain claims in each patent not to have been proven invalid. The Federal Circuit

affirmed the PTAB's decisions. The parties dispute the scope of statutory estoppel that applies to Symantec's invalidity arguments in this case because of the PTAB's final written decisions, pursuant to 35 U.S.C. § 315(e)(2). Resolution of this issue (i) involves a pure question law (*i.e.*, the correct interpretation of § 315(e)(2)) and (ii) could greatly simplify expert discovery and trial preparation concerning invalidity. Columbia respectfully submits that it would be efficient for the Court to address this issue now because the parties otherwise will expend substantial resources litigating issues that could be fully resolved by this Court's interpretation of the relevant statute. Because Local Rule 56(C) provides that, “[u]nless permitted by leave of Court, a party shall not file separate motions for summary judgment addressing separate grounds for summary judgment,” Columbia seeks leave so that this issue may be raised sooner but without prejudicing Columbia.

The grounds for this motion are provided in more detail in the accompanying Memorandum in Support. Columbia has also included an Exhibit 1 with this motion, which is the Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment Regarding *Inter Partes* Review Estoppel that Columbia would promptly file if the Court grants leave. Exhibit 1 does not include the accompanying Declaration of Dustin F. Guzior and related exhibits, which Columbia would file promptly if the Court grants leave.

Dated: October 2, 2018

Respectfully submitted,

*/s/ John M. Erbach*

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*Counsel for Plaintiff The Trustees of  
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**CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify that on the 2nd day of October, 2018, I will electronically file the foregoing Plaintiff's Unopposed Motion for Leave to File Motion for Partial Summary Judgment using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

By: /s/ John M. Erbach  
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